

**State Board of Control
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Lien Recovery and the Victims of Crime Program

**A brochure for the legal community
prepared by the**

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**For Victims of Crime Program
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California Victims of Crime Program

Due to an increase in awareness of the Victims of Crime Program (Program), many citizens of California will receive financial assistance from the Program. The nation's first crime victims compensation program was established in California in 1965 to provide financial assistance to crime victims and their families. The State Board of Control (Board) administers the Program, which provides financial assistance to qualifying victims of crime who have no other means of reimbursement to cover expenses associated with medical treatment, mental health counseling, loss of income, loss of support, funeral/burial costs and rehabilitation. (Government Code § 13959 et seq.) Funding for the Program is provided through the Restitution Fund (Fund), which receives its revenue primarily from the imposition and collection of penalty assessments and restitution fines levied against convicted offenders.

Statutory Lien Rights

The Program is intended to be a payor of last resort. Therefore, once the Program has paid benefits to, or on behalf of a victim, the State is entitled to reimbursement from any recovery made by, or on behalf of, the victim as the result of the same criminal incident.

(Government Code § 13966.01.) This right is secured by a statutory lien and applies to all forms of compensation, including any form of workers' compensation (*Id.*; Labor Code § 4903(h).) The application completed by an applicant for assistance under the Victims of Crime Act includes notice of the State's right to recover and the statutory lien. The Board developed its lien collection process with the intention of pursuing collection of all liens against civil suits and workers' compensation settlements. This philosophy is consistent with the Board's mission to ensure the integrity of the Fund.

The Board has the ability to reduce its lien when it is in the best interest of the State or to avoid undue hardship to the victim. Requests for waiver or reduction of a lien for these reasons should be accompanied by sufficient factual documentation. Although the Board has the ability to waive or reduce its lien, attorneys should not automatically assume that their client's situation represents an "undue hardship" and therefore will be eligible for a reduction or waiver, without first contacting the Board. Such assumptions could place an attorney and his/her client at risk of incurring personal liability for payment of the Board's lien.

Attorney Obligations

Attorneys are required to notify the Board upon initiating and/or settling a case for, or on behalf of, a crime victim when the action is the result of a crime for which the Program has paid benefits (Government Code § 13966.01.) This is to ensure that the Board has the opportunity to perfect its statutory lien. Attorneys who participate in the distribution of settlement proceeds without providing for payment of the Board's lien may be held liable for the loss to the State under a theory of conversion or constructive trust. (*Miller v. Rau* (1963) 216 Cal.App.2d 68, 30 Cal.Rptr. 612; *Siciliano v. Fireman's Fund Insurance* (1976) 62 Cal.App.3d 745, 133 Cal.Rptr. 376.) Recent legislation has further strengthened and clarified the statutes holding attorneys accountable for contacting the Board upon initiating and/or settling cases involving victims of crime who have received Program benefits. (Chapter 295, Statutes of 1993 (Senate Bill 774.) Attorneys who disburse settlement monies without first contacting the Board may be subject to litigation with the Attorney General's Office, as well as disciplinary proceeding before the State Bar. It is therefore strongly recommended that attorneys who represent victims of crime consult with their clients to determine if they have been recipients of Program benefits.

Workers' Compensation

If a victim is injured as the result of a crime that occurred at their workplace, he or she may be eligible to receive compensation from the Program in addition to benefits he or she may receive through a workers' compensation claim. Specifically, a victim may be eligible to receive compensation from the Program in an amount that represents the difference between their actual wage loss and the amount of income benefits received through workers' compensation. The Program will typically pay a portion of a victim's net income loss as well as other crime-related expenses not covered by workers' compensation. In this manner, and to the extent possible, the Program works to make the victim "whole." Labor Code § 4903(h) grants the Board a lien in the amount of indemnification granted by the California Victims of Crime Program. The lien applies to all forms of compensation, including, but not limited to temporary disability, permanent disability and the proceeds of a compromise and release. (*Burnsed v. State Board of Control* (1987) 189 Cal.App.3d 213, 234 Cal.Rptr. 316.)

The Board's lien differs from most liens in that it is asserted against an injured worker's compensation, similar to a lien for child support. The Board is not required to prove that an injury arose out of employment, that a service was necessary to cure or relieve an

injury, or that the cost of a particular service is reasonable. The Board, however, is required to prove that benefits were paid to or on behalf of the injured worker. There are no provisions within the Labor Code authorizing the Workers' Compensation Appeals Board (WCAB) to waive or reduce the Board's lien. In the event the Board's lien is not resolved, the Board may file a Declaration of Readiness to Proceed with the WCAB to have its lien determined. It is imperative that an attorney thoroughly understand the Board's lien practices and policies prior to negotiating a workers' compensation settlement.

Civil Suits

In the event the victim files a civil suit relating to the same incident for which he/she received Program benefits, the Board must be provided with notice of institution of legal proceedings. In accordance with Government Code § 13966.01 (d) and (e), the notice shall include the names and addresses of all parties to the claim or action, except for those persons represented by an attorney, in which case the name of the party and the name and address of the attorney; the nature of the claim asserted or action brought; in the case of

actions before courts or administrative agencies, the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number. When the victim or his/her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by a carrier, notice shall include a statement of that fact and the name and address of the carrier.

The Board's intent in applying its lien policy is to effectuate a settlement that will satisfy the Board's lien, while allowing the victim to retain a reasonable settlement. All monies that are recovered by the Board are deposited into the Restitution Fund and are used to assist other victims of crime in California.

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